

# STATE OF NEW YORK

7369

2023-2024 Regular Sessions

## IN SENATE

May 22, 2023

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law, in relation to electronic notices or documents in premium finance transactions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The banking law is amended by adding a new section 578-a to  
2 read as follows:

3 § 578-a. Electronic notes and documents. 1. For purposes of this  
4 section, the following words have the following meanings:

5 (a) "Delivered by electronic means" includes:

6 (i) delivery to an electronic mail address at which a party has  
7 consented to receive notices or documents; or

8 (ii) posting on an electronic network or site accessible via the  
9 internet, mobile application, computer, mobile device, tablet, or any  
10 other electronic device, together with separate notice of such posting  
11 which shall be provided by electronic mail to the address at which such  
12 party has consented to receive notice or by any other electronic deliv-  
13 ery method that has been consented to by such party.

14 (b) "Party" means any recipient of any notice or document required as  
15 part of a premium finance transaction, including, but not limited to, an  
16 insured, insurance agent or broker, or insurer.

17 2. Subject to the requirements of this section, any notice to a party  
18 or any other document required under this article in a premium finance  
19 transaction or that is to serve as evidence of a premium finance agree-  
20 ment may be delivered, stored, and presented by electronic means so long  
21 as it meets the requirements of article three of the state technology  
22 law. Where this chapter requires that written notice to an insured or  
23 any other document required under this article be mailed or delivered to  
24 the insured at his address as shown in such premium finance agreement or  
25 at his last known address as shown on the records of the premium finance

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 agency, the notice may be delivered by electronic means to an electronic  
2 address not shown on such premium finance agreement.

3 3. Delivery of any notice or document in accordance with this section  
4 shall be considered equivalent to any mail or delivery method required  
5 under this article.

6 4. A notice or document may be delivered by electronic means by a  
7 premium finance agency to a party under this section if:

8 (a) such party has affirmatively consented to such method of delivery  
9 and has not withdrawn such consent;

10 (b) such party, before giving consent, is provided with a clear and  
11 conspicuous statement informing such party of:

12 (i) the right of such party to withdraw, at any time, consent to have  
13 such notice or document be delivered by electronic means, and any condi-  
14 tions or consequences imposed in the event consent is withdrawn;

15 (ii) the types of notices and documents to which such party's consent  
16 would apply;

17 (iii) the right of such party to have such notice or document deliv-  
18 ered in paper form; and

19 (iv) the procedures such party must follow to withdraw consent to have  
20 such notice or document delivered by electronic means and to update such  
21 party's electronic mail address;

22 (c) such party:

23 (i) before giving consent, is provided with a statement of the hard-  
24 ware and software requirements for access to and retention of such  
25 notice or document delivered by electronic means; and

26 (ii) consents electronically, or confirms consent electronically, in a  
27 manner that reasonably demonstrates that such party can access informa-  
28 tion in the electronic form that will be used for notices or documents  
29 delivered by electronic means as to which such party has given consent;  
30 and

31 (d) after consent of such party is given, such premium finance agency,  
32 in the event a change in the hardware or software requirements needed to  
33 access or retain such notice or document delivered by electronic means  
34 creates a material risk that such party will not be able to access or  
35 retain a subsequent notice or document to which such consent applies:

36 (i) provides such party with a statement that describes:

37 (A) the revised hardware and software requirements for access to and  
38 retention of such notice or document delivered by electronic means; and

39 (B) the right of such party to withdraw consent without the imposition  
40 on any condition or consequence that was not disclosed at the time of  
41 initial consent; and

42 (ii) complies with paragraph (b) of this subdivision.

43 5. (a) Before a notice or document is delivered by electronic means, a  
44 premium finance agency shall obtain a party's consent to deliver such  
45 notice or document by electronic means. Such party's consent to receive  
46 one type of notice or document shall not be construed as a blanket  
47 consent for every type of notice and document to be delivered by elec-  
48 tronic means. Such party's consent shall only apply to the types of  
49 notices and documents identified in the clear and conspicuous informa-  
50 tion statement provided to the consenting party, as required by subpara-  
51 graph (ii) of paragraph (b) of subdivision four of this section.

52 (b) Any electronic mail being sent by a premium finance agency to a  
53 party in connection with the delivery of a notice of intent to cancel or  
54 notice of cancellation delivered by electronic means shall include in  
55 the subject line and body of the communication clear and conspicuous  
56 language alerting the receiving party as to the importance of the commu-

1 nication and the type of notice being delivered by electronic means to  
2 such party.

3 6. This section does not affect requirements related to content or  
4 timing of any notice or document required under this article.

5 7. The legal effectiveness, validity, or enforceability of any premium  
6 finance agreement executed by a party may not be denied solely because  
7 of the failure to obtain electronic consent or confirmation of consent  
8 of the party pursuant to subparagraph (ii) of paragraph (c) of subdivi-  
9 sion four of this section.

10 8. (a) A withdrawal of consent by a party does not affect the legal  
11 effectiveness, validity, or enforceability of a notice or document  
12 delivered by electronic means to such party before such withdrawal of  
13 consent is effective.

14 (b) A withdrawal of consent by a party is effective within a reason-  
15 able period of time after receipt of such withdrawal by a premium  
16 finance agency.

17 (c) Failure by a premium finance agency to comply with paragraph (d)  
18 of subdivision four and subdivision ten of this section may be treated,  
19 at the election of the party, as a withdrawal of consent for purposes of  
20 this section.

21 9. This section does not apply to a notice or document delivered by a  
22 premium finance agency in an electronic form before the effective date  
23 of this section to a party who, before such date, has consented to  
24 receive a notice or document in an electronic form otherwise allowed by  
25 law.

26 10. If the consent of a party to receive certain notices or documents  
27 in an electronic form is on file with a premium finance agency before  
28 the effective date of this section, and pursuant to this section, such  
29 premium finance agency intends to deliver additional notices or docu-  
30 ments to such party in an electronic form, then prior to delivering such  
31 additional notices or documents electronically, such premium finance  
32 agency shall:

33 (a) provide such party with a statement that describes:

34 (i) such notices or documents that shall be delivered by electronic  
35 means under this section that were not previously delivered electron-  
36 ically; and

37 (ii) such party's right to withdraw consent to have notices or docu-  
38 ments delivered by electronic means, without the imposition of any  
39 condition or consequence that was not disclosed at the time of initial  
40 consent; and

41 (b) comply with paragraph (b) of subdivision four of this section.

42 11. A premium finance agency shall mail or deliver a notice or docu-  
43 ment by any other delivery method permitted by this article other than  
44 electronic means if such premium finance agency:

45 (a) attempts to deliver by electronic means such notice or document  
46 and has a reasonable basis for believing that such notice or document  
47 has not been received by the party; or

48 (b) becomes aware that the electronic mail address provided by such  
49 party is no longer valid.

50 12. This section shall not be construed to modify, limit, or supersede  
51 the provisions of the federal Electronic Signatures in Global and  
52 National Commerce Act, Public Law 106-229, as amended.

53 § 2. This act shall take effect immediately.